

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD MEANS,

Plaintiff,

v.

STEVEN SEVERSON,

Defendant.

ORDER

11-cv-3-slc

Plaintiff Donald Means is proceeding in this action on his claim that defendant Severson prohibited him from attending a feast for Eid-ul-Fitr in violation of the free exercise clause of the United States Constitution. Defendant answered the complaint and a preliminary pretrial conference was held on May 13, 2011. Now plaintiff has filed a motion in which he says he no longer wishes to pursue this case due to financial instability and psychological reasons.

When a motion for voluntary dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because the defendant has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, unless defendant agrees to a dismissal without prejudice. If the defendant does not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendant may have until June 13, 2011, in which to advise plaintiff and the court whether he agrees to a dismissal of this action without prejudice. If

defendant agrees to such a dismissal, then the clerk of court is directed to enter a judgment of dismissal without prejudice. If defendant does not agree to such a dismissal, plaintiff may have until June 27, 2011, in which to withdraw his motion for voluntary dismissal. If, by June 27, 2011, plaintiff fails to request withdrawal of his notice of voluntary dismissal, then the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 6th day of June, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge